Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544

In the Matter of BellSouth's Petition for Declaratory Ruling Regarding the Commission's Definition of Interconnected VoIP in 47 C.F.R. § 9.3 and the Prohibition on State Imposition of 911 Charges on VoIP Customers in 47 U.S.C. § 615a-1(f)(1). Petition of the 911 Districts of Autauga County, Calhoun County, Mobile County, and the City of Birmingham for a Declaratory Ruling Regarding the Meaning and Application of the Definition of Interconnected VoIP Service Set Forth in 47 C.F.R. § 9.3	WC Docket No. 19-44

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TABLE OF CONTENTS

I. INTRODUCTION AND EXECUTIVE SUMMARY

The Petitions submitted by a group of Alabama 911 districts and by BellSouth respectively raise two issues, one simple and one that potentially becomes more complex. The simple issue is whether 47 U.S.C. § 615a-1(f) allows a state or locality to levy higher 911 fees on voice over Internet Protocol ("VoIP") services than on legacy time division multiplexing ("TDM") services by using the same per-unit rate, but applying that rate to different assessable units. The Districts' reading that such manipulations are permissible flouts the plain meaning of the statutory language that "the fee or charge [assessed on a VoIP service] may not exceed the amount of any such fee or charge applicable to the same class of subscribers to telecommunications services."[1] This provision has no meaning unless the "fee or charge" is the total assessed charge. To honor Congress' directives in the NET 911 Improvement Act and otherwise to promote the deployment of VoIP and IP networks, the Commission must make clear that the statute preempts the result the Districts seek, which is to assess a higher 911 fee on VoIP than on non-VoIP telecommunications services.

The Commission need not reach the potentially harder issue, which is determining the regulatory classification of various service in various configurations. Once the Commission makes clear that Section 615a-1(f) precludes applying different total charges to VoIP than to equivalent non-VoIP telecommunication services (such as TDM services), the need to classify the service as between VoIP and non-VoIP telecommunications services disappears..

II. BACKGROUND

The Emergency Telephone Service Act ("ETSA") governs the collection of 911 fees in the State of Alabama. The ETSA requires voice service providers to assess 911 fees from their

[1] 47 U.S.C. § 615a-1(f).

subscribers and remit them to the governing 911 entity. The Alabama districts assert that, by its terms, the version of the ETSA at issue here, which is the ETSA as it stood prior to October 2013, expressly differentiates how those fees are calculated based upon the technology used to deliver the service to which the customer subscribes. At issue here are enterprise voice services, provided using legacy TDM technology or VoIP technology. The Alabama districts claim the ETSA calculates the 911 fees for these two modes of delivering voice services differently, even though they are substitutes and provide essentially the same functionality to the user.

The Commission generally considers TDM-based services offered to all comers on the same rates, terms and conditions to be telecommunications services.[2] TDM services like DS-1s are "channelized," meaning that there is a fixed number of circuits, or call paths, available (e.g., 23 voice channels and one call control channel per DS-1). VoIP services do not, by the nature of the underlying technology, have channels, but they are effectively identical to TDM for this purpose because they are configured to allow a limited number of simultaneous calls. Importantly, the number of channels available over a TDM service and the simultaneous call capacity of a VoIP service frequently differ from the number of end-user telephone numbers assigned to that service. End users frequently assign more telephone numbers to a service than there are channels or simultaneous call capacity, because it is highly unlikely that every telephone number will be used to send or receive a call at the same time.

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[2] *See Nat'l Ass'n of Reg. Util. Comm'rs v. FCC*, 525 F.2d 630, 642 (D.C. Cir. 1976) ("The key factor [in categorizing service as common carrier] is that the operator offer indiscriminate service to whatever public its service may legally and practically be of use."); *Virgin Is. Tel. Corp. v. FCC*, 198 F.3d 921, 926 (D.C. 1999) (affirming Commission decision that the term "telecommunications carrier" means essentially the same thing as "common carrier").

For primary rate interface service or channelized DS-1 level service—both provided over TDM—the pre-2013 ETSA has been interpreted to require that a subscriber be assessed on the number of channels configured for or capable of accessing 911.[3] In sharp contrast, the Alabama districts contend that during this period the ETSA required that VoIP providers bill 911 fees for each VoIP service sold to an end user not on the basis of simultaneous call capacity, but instead per 10-digit telephone number.[4] Given that both TDM and VoIP can support service for many more telephone numbers than channels or simultaneous call capacity, the decision to assess 911 fees on telephone numbers can vastly inflate the 911 fees assessed for a VoIP service of a given simultaneous call capacity as compared to the fees assessed on a TDM service with an equivalent number of channels.[5]

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[3] Ala. Code § 11-98-5.1 (repealed 2013); *Madison Cty. Commc'ns Dist. v. BellSouth,* 2009 WL 9087783 at *8 (N.D. Ala. Mar. 31, 2009). The petitioners have outlined the time period relevant to their specific disputes and the version of the ETSA relevant at the time. *See* BellSouth Telecomms., LLC's Pet. for Declaratory Ruling at 2 & n.2, WC Docket No. 19-44 (filed Jan. 7, 2019) ("BellSouth Petition"); Pet. of the 911 Districts of Autauga Cty., Calhoun Cty., Mobile Cty., and the City of Birmingham for a Declaratory Ruling Regarding the Meaning and Application of the Definition of Interconnected VoIP Service Set Forth in 47 C.F.R. § 9.3 at 5 & n.2, WC Docket No. 19-44 (filed Jan. 29, 2019) ("Districts Petition").

[4] Ala. Code § 11-98-5.1(c) (repealed 2013) ("The emergency communication district fee authorized and levied in each district pursuant to Section 11-98-5 shall apply to all wired telephone service utilized within the district, including such service provided through Voice-Over-Internet Protocol (VoIP) or other similar technology. It shall be the duty of each provider of VoIP or similar service to collect the fee for each 10-digit access number assigned to the user and to remit such fee as provided in Section 11-98-5.").

[5] For example, if customer A purchases a TDM DS-1 with 23 voice channels and assigns 50 telephone numbers to that DS-1, the 911 assessment on that DS-1 will be 23 units (e.g., $23 at $1 per channel). If customer A purchases a functionally identical VoIP service with a simultaneous call capacity of 23 lines and assigns 50 telephone numbers to that service, the 911 assessment on that VoIP service will be 50 units (e.g., at $1 per unit, $50 for VoIP based on telephone numbers, rather than $23 if based on simultaneous call capacity).

As detailed in BellSouth's Petition, there are numerous lawsuits wherein the plaintiffs are seeking interpretations of state 911 assessment requirements that result in interconnected VoIP providers paying discriminatorily high 911 charges.[6] Seven of these suits are stayed pending the Commission's declaration.[7]

The Districts ask the Commission to declare that all equipment located on (or close enough in proximity to) the customer's premises that "transmits, processes, or receives IP packets" is presumptively Internet protocol-compatible customer premises equipment for purposes of the definition of interconnected VoIP. The Districts further ask the Commission to declare that voice services that use such equipment are necessarily interconnected VoIP.[8] They also ask the Commission *not* to address the "meaning and preemptive scope" of Section 615a-1(f)(1), but if it does, they request a finding that the statute only prohibits charging interconnected VoIP providers a higher per-unit rate than they charge local exchange services, rather than the total charge, and that no federal law restricts their ability to impose E911 fees on non-interconnected VoIP voice services.[9] BellSouth asks the Commission to declare that transmitting voice traffic over the last-mile in IP format is a necessary condition for a service to be VoIP. BellSouth also seeks a declaration that a provider's decision to transmit a service in IP, even in the last mile, does not render a service interconnected VoIP if the customer ordered a

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6 BellSouth Pet. at 1.

7 *Id.*

8 Districts Pet. at 3–4, 15.

9 *Id.* at 4.

non-IP service.[10] BellSouth also asks the Commission to declare that Section 615a-1(f)(1) prohibits charging interconnected VoIP customers a greater total fee than is charged to customers of similar non-VoIP services.[11]

III. THE COMMISSION SHOULD RESOLVE THE PETITIONS BY PREEMPTING DISCRIMINATORY 911 FEES ON VOIP SERVICES

The Commission clearly has authority to interpret Section 615a-1(f)(1) to provide a uniform interpretation of federal law and to preempt contrary state actions. Moreover, the plain meaning of Section 615a-1(f)(1) prevents states from charging 911 fees on VoIP services that are effectively higher than those for similar telecommunications services. That reading is supported by federal policies to promote IP-enabled services that Congress and the Commission have adopted. Accordingly, the Commission should issue a declaratory ruling that clarifies that Section 615a-1(f)(1)'s "fee or charge" language refers to the total per subscriber assessment rather than the rate at which that fee or charge is calculated. And, in that ruling, it should establish that any state law that would impose discriminatorily high 911 fees or charges on interconnected VoIP—or on VoIP services other than interconnected VoIP—would frustrate federal policy and would be preempted.

A. The Commission Has Authority To Interpret Section 615a-1(f)(1) and Preempt Contrary State Actions.

The Districts claim that the Commission cannot address whether the Alabama statute is preempted by Section 615a-1(f)(1).[12] They argue that "[t]he Commission must necessarily limit

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[10] BellSouth Pet. at 2.

[11] *Id.* at 2–3.

[12] Districts Pet. at 21.

its review to the issues that the district court referred to it" and "the district court did not refer the preemption question to the Commission."[13] Contrary to the Districts' position, the Commission has ample authority here to decide the preemption issues regardless of whether the court referred a specific issue to it. In any event, the court did in fact refer the preemption question to the Commission.

First, Congress created the Commission to "execute and enforce" the provisions of the Communications Act of 1934, as amended, as well as sections of Title 47 in the same chapter of the U.S. Code, and empowered it to "issue such orders . . . as may be necessary in the execution of its functions."[14] Acting pursuant to the Administrative Procedure Act, the Commission has the power to issue declaratory orders "in its sound discretion" when needed to "terminate a controversy or remove uncertainty."[15] The Commission has codified this general authority within its own Rule 1.2, which also provides that the Commission may issue a declaratory ruling "when asked or on its own motion."[16] 47 U.S.C. § 615a-1(f) falls within the Commission's authority to interpret and enforce.[17] The BellSouth and Districts Petitions demonstrate that there

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[13] *Id.* at 22–23.

[14] 47 U.S.C. §§ 151, 154(i).

[15] 5 U.S.C. § 554(e) ("The agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty.").

[16] 47 C.F.R. § 1.2(a) ("The Commission may, in accordance with section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty.").

[17] As the expert agency in the field of "communication by wire and radio," the Commission "shall execute and enforce the provisions of this chapter." 47 U.S.C. § 151. Section 615a-1(a)(1) is within Subchapter VI of Chapter 5 of Title 47. Section 151 is the first section of Chapter 5 and is entitled "Purposes of chapter; Federal Communications Commission

is indeed a controversy or uncertainty about the proper interpretation of Section 615a-1(f)(1) and about state requirements that assess VoIP services higher overall 911 fees than TDM services; CenturyLink affirms that it, too, is involved in litigation in which the meaning of Section 615a-1(f) is a threshold issue. Thus, the Commission's authority under the Communications Act and the Administrative Procedure Act includes the ability to interpret § 615a-1(f)(1) and address preemption of contrary state interpretations and VoIP policies. Indeed, the Districts put forth no argument that the Commission could not address this issue on its own motion or in response to a petition for declaratory ruling outside a primary jurisdiction referral. The fact that the issue arises in the context of a primary jurisdiction referral has no bearing on the Commission's ability to address it.

In any event, the district court's referral order in fact seeks the Commission's guidance on the legality of the state's attempts to charge VoIP providers significantly higher fees for their VoIP subscribers.[18] The court granted BellSouth's motion, which the court describes as seeking a referral to the Commission of "the Districts' proposed classification of VoIP service . . . *together with whether the ETSA's provisions regarding 911 fees are preempted by federal law*."[19] Consistent with that, the referral order discusses the Commission's role in establishing and interpreting the definition of interconnected VoIP as well as the need for uniform regulation

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created." In addition, Congress provided the Commission with specific authority to enforce the provisions of Section 615a-1. 47 U.S.C. § 615a-1(e)(2).

[18] *See Autauga Cty. Emergency Mgmt. Commc'n Dist., et al. v. BellSouth Telecomms., LLC*, Order, Case No.: 2:15-cv-00765-SGC (N.D. Ala. filed Mar. 2, 2018) ("Referral Order"). "Materials [in the record] reveal the FCC's professed desire for uniformity in the field of VoIP regulation." *Id.* at 12.

[19] *Id.* at 7 (emphasis added).

of VoIP. The court clearly identifies the federal preemption question in BellSouth's motion as a specific reason not to adopt the Districts' position that a referral was not necessary.[20]

The cases the Districts cite also undercut their argument that the district court did not refer the preemption question. In both cases, the referring court explicitly limited its referral to a specific issue and justified that limitation.[21] There are no such statements in the order before the Commission. In contrast, the court detailed both questions in BellSouth's referral motion and

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[20] *Id.* at 10–11 ("The problem with the Districts' argument [that this is purely a question of Alabama law] is that interpreting the ETSA's classification of VoIP or similar services implicates federal law. . . . Moreover, while Congress has given the states authority to impose 911 charges on VoIP services, it has precluded charges on VoIP services from exceeding the charges on traditional telephone services.").

[21] The two cases cited by the Districts show courts explicitly limiting referrals where they were concerned the federal agency was potentially biased or lacked the expertise to decide certain issues, concerns that are not present here. The very page of *In re Dep't of Energy Stripper Well Exemption Litigation* the Districts cite shows the referring court's primary concern was federal agency bias. 578 F. Supp. 586, 596 (D. Kan. 1983). The court worried that the Department of Energy, a potential recipient of the disputed funds, would quickly resolve all issues in its favor and distribute to itself over one billion dollars before the referring court could rule. *Id.* at 596 ("The Court is also aware of the concern of some parties of DOE bias in this case. . .The Court emphasizes that he is referring to the DOE only the factual question concerning the particularized impact of the overcharges. The Court is specifically retaining jurisdiction and will make the final determination of the disposition of the funds."). In *Israel v. Baxter Labs., Inc.*, the plaintiffs repeatedly withdrew applications for FDA approval of their drug before filing this suit alleging an antitrust conspiracy. 466 F.2d 272 (D.C. Cir. 1972). The Court of Appeals identified two questions before the District Court: (1) whether the drug was "safe and effective for interstate sale" and (2) whether there was a conspiracy to prevent FDA approval. *Id.* at 280. The plaintiffs were directed to re-file their application with the FDA to address the first question, while the District Court retained jurisdiction over the second question, "since clearly the FDA is not vested with any expertise to determine the accuracy of plaintiffs' antitrust allegations, nor is it empowered to award damages in the event such allegations are shown to be correct." *Id.* at 282. The Districts do not, and cannot, claim that the Commission has a pecuniary interest in the 911 fees or that the proper interpretation of Section 615a-1 lies outside its expertise.

then granted that motion in full.[22] So even if the Commission were limited in what it can consider, which it is not, it is irrelevant in this case because the district court included the preemption questions in its referral order.

B. The Commission Should Preempt "Charges or Fees" That Result In Disparate Total Charges for Similar VoIP and TDM Services.

The plain meaning of Section 615a-1(f)(1) prevents states from charging 911 fees on VoIP services that are effectively higher than those for similar telecommunications services. That reading is supported by federal policies to promote IP-enabled services that Congress and the Commission have adopted. The Commission should accordingly issue a declaratory ruling that (1) clarifies that Section 615a-1(f)(1)'s "fee or charge" language refers to the total per subscriber assessment rather than the rate at which that fee or charge is calculated, and (2) establishes that states may not enforce laws that are inconsistent with this interpretation of Section 615a-1(f)(1).

1. The "fees or charges" refers to the total per subscriber assessment, not the "rate" used in the assessment methodology.

CenturyLink agrees with BellSouth that Section 615a-1(f)(1) precludes "fees or charges" that exceed the total amount applied to a subscriber of similar telecommunications services. This is the most natural reading of the statutory language. Moreover, it is supported by the intent of Congress when it enacted this law, and by Congress' and the Commission's stated goals for advanced services generally as well as "a national IP-enabled emergency network."[23]

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[22] Primary Jurisdiction Referral Order at 7, 14.

[23] New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283, pmbl., 122 Stat. 2620 ("NET 911 Improvement Act"); *Implementation of the Net 911 Improvement Act of 2008*, Report and Order, 23 FCC Rcd. 15884, 15885 ¶ 2 (2008) ("*Net 911 Improvement Act Report and Order*").

The Districts read the statute to permit any "fee or charge" for interconnected VoIP service so long as it is calculated using the same per-unit rate as for telecommunications services—even if the per-unit rate applies to different units that result in differential charges.[24] The Districts argue that Congress did not intend for Section 615a-1(f)(1) to regulate "the number of fees or charges billed."[25] But this reading does not result in interconnected VoIP providers paying the same "fee or charge" as the statute requires and produces absurd results.[26] As noted in BellSouth's example, the Alabama statute causes very different results for customers purchasing similar services: a VoIP subscriber and legacy services customer each purchase the same amount of calling capacity and each obtain the same number of 10-digit telephone numbers, but the VoIP subscriber owes more than four times as much in 911 fees as the traditional telephone service subscriber.[27] As the Districts read the statute, it is no limit at all on states' authority—states may charge interconnected VoIP providers any amount they want so long as it shares a common per-unit rate element with the charges assessed on telecommunications providers, even when the units are different.[28] This interpretation nearly removes the limitation from the statute as states could always come up with a way to apply the same "rate" while ensuring that VoIP providers pay more.

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[24] Districts Pet. at 36–37.

[25] *Id.* at 36.

[26] *Id.* at 36–37.

[27] BellSouth Pet. at 24; *see also supra* note 5.

[28] This theory could lead to even more outlandish results. For example, the Districts could charge a per-unit rate element for every minute a VoIP service is used, or for every byte, or even bit, of data transmitted.

In addition, the Districts' interpretation runs directly counter to the policy goals that Congress established for interconnected VoIP and IP networks, both with respect to 911 services and more generally.

Congress specifically enacted the NET 911 Improvement Act to "promote and enhance public safety by facilitating the rapid deployment of interconnected VoIP 911 and E911 services."[29] Applying the same "rate" to voice channels (for TDM customers) and telephone numbers (for interconnected VoIP customers) leads to precisely the anti-VoIP result that motivated Congress to pass the statute in the first place. Additionally, permitting states to burden interconnected VoIP providers with arbitrarily high and discriminatory fees would slow, rather than "encourage the Nation's transition to a national IP-enabled emergency network."[30] Moreover, Congress separately directed the Commission to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans."[31] The Districts' reading would discourage enterprise customers from subscribing to VoIP services, stifling demand and impeding the IP transition.

2. Section 615a-1(f)(1) preempts discriminatory VoIP fees.

The Commission should also make clear, in its ruling, that its interpretation of Section 615a-1(f)(1) preempts state attempts to impose fees inconsistent with federal policy. When a federal agency interprets a federal law within its jurisdiction and otherwise acts "within the scope

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[29] *Net 911 Improvement Act Report and Order* at 15885¶ 2.

[30] *Id.* The House committee report identified the transition to an "IP-enabled system" as the next phase in the evolution of "emergency services infrastructure." H.R. Rep. No. 110-442, at 8 (2008), *reprinted in* U.S.C.C.A.N. 1011, 1013.

[31] 47 U.S.C. § 1302(a).

of its congressionally delegated authority," that agency's interpretation "may pre-empt state regulation."[32] The federal government preempts state law in several situations, including when Congress expresses a "clear intent" to preempt state law or when "state law stands as an obstacle to the accomplishment and execution of the full objectives of Congress."[33] Both of these bases for preemption are present here.

First, Congress has expressed a "clear intent" to preempt state law; the entire last sentence of Section 615(a)-1(f)(1) *directly limits* state laws. While the Section ensures the ability of State and local governments to collect fees from interconnected VoIP services to support 911 and E911, the last sentence specifically imposes a limitation that "the fee or charge may not exceed the amount of any such fee or charge applicable to the same class of subscribers to telecommunications services."[34] The Commission's declaration of the meaning of this provision preempts any state or local efforts to impose fees inconsistent with federal policy. Second, as explained above, the Districts' interpretation to permit higher fees on VoIP services frustrates federal policy in promoting advanced services and the transition to IP networks.[35] CenturyLink encourages the Commission to issue a declaratory ruling interpreting Section 615a-1(f)(1) to require equivalent results for VoIP and telecommunications services and to be clear

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[32] *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 369 (1986). As the expert agency in the field of "communication by wire and radio," the Commission "shall execute and enforce the provisions of this chapter." 47 U.S.C. § 151. Congress also granted the Commission explicit authority to enforce 47 U.S.C. § 615a-1. 47 U.S.C. § 615a-1(e)(2) ("The Commission shall enforce this section as if this section was a part of the Communications Act of 1934 [47 U.S.C. 151 et seq.].").

[33] *La. Pub. Serv. Comm'n*, 476 U.S. at 368-69.

[34] 47 U.S.C. § 615a-1(f)(1).

[35] *See supra* at 11.

that attempts to impose state fees that would be inconsistent with that interpretation violate federal law.

C. The Commission Should Declare That States May Not Assess Fees or Charges on Other VoIP Services That Exceed Those Imposed on Telecommunications Services

In its ruling in this matter, the Commission should establish that any state law that would impose discriminatorily high 911 fees or charges on interconnected VoIP – or on VoIP services other than interconnected VoIP - would frustrate federal policy and thus is preempted.

CenturyLink encourages the Commission to look broadly at the problem presented by the petitioners. Discriminatorily high charges on interconnected VoIP providers slow the IP transition and the deployment of advanced networks in contravention of federal policy. The same is true with regard to VoIP services other than interconnected VoIP services. The Commission should exercise its authority to preempt state laws that would, for each class of subscribers to VoIP service, assess a fee or charge that exceeds the amount of the fee or charge applicable to the same class of subscribers to telecommunications services.

As the Supreme Court has made clear, a federal agency may preempt state law when "state law stands as an obstacle to the accomplishment and execution of the full objectives of Congress."[36] In the *Vonage Order*, for example, the Commission preempted Minnesota regulation of interconnected VoIP because it conflicted with an array of federal policies.[37] In the

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[36] *La. Pub. Serv. Comm'n*, 478 U.S. at 368-69.

[37] *See Vonage Holdings Corp. Pet. for Declaratory Ruling Concerning an Order of the Minn. Pub. Utils. Comm'n*, Mem. Op. and Order, 19 FCC Rcd. 22404, 22415-18 ¶¶ 20-22 & 22425-27 ¶¶ 33-37 (2004) (finding traditional common carrier regulation of Vonage's interconnected VoIP service in conflict with federal policy for competition, deregulation, Congress's Internet policy, and promoting deployment of "advanced telecommunications

case of Vonage, there was no specific statutory language within the Communications Act or elsewhere that prohibited states from applying common carrier regulation to interconnected VoIP services. The Commission nonetheless preempted state regulation in order to promote and protect federal policies. More recently, the Commission preempted state regulation of broadband Internet access service to the extent it is inconsistent with the Commission's approach.[38] The Commission should do the same here. Specifically, the Commission should declare that state laws that impose discriminatorily high 911 fees or charges on VoIP services other than interconnected VoIP frustrate federal policy and are preempted.

As with interconnected VoIP services, federal policy supports the development and use of non-interconnected VoIP services. First, permitting states to burden other VoIP providers with arbitrarily high and discriminatory fees would slow, rather than "encourage the Nation's transition to a national IP-enabled emergency network."[39] Second, Section 1302 directs the Commission (as well as the states) to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans."[40] Excessive fees on users of VoIP services discourage use of those services, thereby stifling the demand that drives providers to deploy the networks that support those services.[41] Finally, the Commission continues to

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capability"), *pets. for rev. denied sub nom. Minn. Pub. Utils. Comm'n v. FCC*, 483 F.3d 570 (8th Cir. 2007).

38 *Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd. 311, 427 ¶ 194 (2017), *pets. for rev. pending*, *Mozilla Corp. v. FCC & USA et al.*, No. 18-1051 et al. (D.C. Cir.).

39 *NET 911 Improvement Act Report and Order* at 15885 ¶ 2.

40 47 U.S.C. § 1302(a).

41 *See Verizon v. FCC*, 740 F.3d 623, 643 (D.C. Cir. 2013) (agreeing that the Commission reasonably tied the need to promote innovation and end user demand to meet the statutory

pursue a policy of promoting the transition to IP services and networks.[42] Imposing higher fees on VoIP services than on telecommunications services encourages consumers to remain on legacy services rather than participating in the IP transition.

Indeed, as the broader universe of VoIP services become more mainstream, Congress and the Commission are addressing their treatment to ensure that they are regulated when necessary to ensure consumer protection, as the Commission did with interconnected VoIP. Non-interconnected VoIP providers must ensure that their services are available to persons with disabilities[43]; may not block voice traffic to and from the PSTN[44]; and must take steps to ensure that calls to rural areas terminate to their destinations.[45] The Commission is considering whether to adopt 911 rules for providers of one-way VoIP services[46] and whether certain non-interconnected VoIP services should be subject to the callerID anti-spoofing requirements.[47] As the Commission acknowledges and addresses the increasing use of non-interconnected VoIP, it

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deployment goal in § 1302: "In billiards, a triple-cushion shot, although perhaps more difficult to complete, counts the same as any other shot.").

[42] *See, e.g.*, *Reg. of Bus. Data Servs. for Rate-of-Return Local Exchange Carriers*, WC Docket No. 17-144 et al., FCC 18-146, ¶ 137 (Oct. 24, 2018) ("Forbearing from these requirements will promote competition by allowing these resources to be redirected to increase network investment and to accelerate the technology transition from legacy circuit-based services to packet-based services such as Ethernet.").

[43] 47 U.S.C. § 617(b).

[44] *See Connect Am. Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17633, 18,029 ¶ 974 (2011) (subsequent history omitted).

[45] 47 C.F.R. §§ 64.2101-.2117.

[46] *Implementing Kari's Law and Sec. 506 of RAY BAUM'S Act*, Notice of Proposed Rulemaking, PS Docket No. 18-261, ¶ 82 (Sept. 26, 2018).

[47] *Implementing Sec. 503 of RAY BAUM'S Act*, Notice of Proposed Rulemaking, WC Docket Nos. 18-335 & 11-39, FCC 19-12, ¶ 32 (Feb. 15, 2019).

should also act to ensure that state policies do not interfere with these federal ones. CenturyLink encourages the Commission to declare that states may not impose fees or charges on non-interconnected VoIP in excess of those charged for subscribers of equivalent telecommunications service, as also suggested above for interconnected VoIP. Even if the Commission declines to impose 911 requirements on some or all non-interconnected VoIP services, discriminatorily high 911 fees would discourage their use and frustrate federal policy as explained above.

IV. A BROAD DECLARATION PROHIBITING DISCRIMINATORY FEES AND CHARGES REMOVES THE NEED TO CLASSIFY INDIVIDUAL VOICE SERVICES

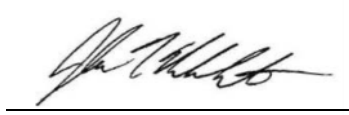
To resolve the present disputes, the Commission need not resolve the classification of every conceivable voice service that has an IP component. A clear preemption of 911 fees or charges that assess more fees for interconnected and non-interconnected VoIP services than for similar telecommunications services would resolve the entirety of the parties' disputes – as to all types of services potentially implicated. Furthermore, a clear statement preempting discriminatory treatment of VoIP services will guide states, localities, courts, and providers as they navigate the present disputes and no doubt future ones as well. By being clear now, the Commission can prevent wasteful future disputes around the appropriate level of 911 fees and charges for VoIP services of all kinds.

Once it is clear that VoIP cannot be assessed a greater charge that similar TDM telecommunications services, the need to classify services as VoIP or TDM for the purposes of assessing 911 fees will dissipate. The distinction has significance at present only because entities such as the Districts have sought to impose higher fees on VoIP than on TDM. Accordingly, by providing a definitive interpretation of Section 615a-1(f), the Commission can resolve the present disputes.

V. CONCLUSION

The Commission should declare that "fee or charge" in Section 615a-1(f)(1) refers to the total fee charged per subscriber, rather than the rate used to calculate a charge, and that this interpretation preempts the differential charges that would result from the Districts' contrary interpretation.

Respectfully submitted,



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